

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BRIAN C SMITH,

Plaintiff,

vs.

SPINDLETOP MHMR SERVICES, HOLLY
BOREL,

Defendants.

NO.1:20-CV-00039-TH


**ORDER ADOPTING REPORT AND RECOMMENDATION DISMISSING
COMPLAINT**

On March 24, 2020, United States Magistrate Judge Zack Hawthorn issued a report (Doc. No. 17) recommending granting Defendants Spindletop MHMR Services and Holly Borel's ("defendants") "Motion to Dismiss" (Doc. No. 8). Plaintiff Brian C. Smith ("Smith") filed multiple objections to the report including additional documents and responses. Doc. No. 18, 19, 23, 24, 26. On April 21, 2020, defendants filed their response to plaintiff's objections to the report and recommendation. Doc. No. 27. In this response, defendants argue for the first time that Smith cannot recover damages under the ADA and, because Smith's complaint seeks only monetary damages rather than injunctive relief, Smith fails to state a claim upon which relief can be granted. *Id.* at 7. Because Smith failed to file a substantive response to this claim, the magistrate judge ordered Smith to respond within fourteen days and address his alleged inability to recover damages under the ADA. Doc. No. 32. Should he decide to seek injunctive relief, Smith was directed to file an amended complaint. *Id.* Furthermore, Smith was warned that failure to respond could result in dismissal under Fed. R. Civ. P. 41(b). *Id.* Smith has failed to file a reply or to amend his complaint and the time for doing so has passed.

It is, therefore, **ORDERED** that the magistrate judge's report and recommendation (Doc. No. 17) is adopted to the extent it recommends dismissal. Accordingly, it is **ORDERED** that Smith's complaint is **DISMISSED**.

A final judgment will be entered separately.

SIGNED this the **23** day of **June, 2020**.


Thad Heartfield
United States District Judge